MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2600 OF 2007

4 IN

SUIT NO. 3096 OF 1996

SUNIL J. SAWANT .. PLAINTIFF

Vs.

ANIL J. SAWANT & ORS. .. DEFENDANTS

Mr. Sachin Chavan i/b S. S. Kulkarni for plaintiff
Mr. Vishal Ghosalkar for D-1
Ms. Suchitra Kamble for D-4,6 & 7

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 10, 2007.

P.C.

. This notice of motion is moved by defendant 1. It is prayed that delay in filing written statement may be condoned and the office be directed to take the written statement on record.

2. The suit is of the year 1996. Defendant 1 is the contesting defendant. He is handicapped. He is present in the court today. The plaintiff is his brother. The dispute appears to be about a flat. In the affidavit-in-support of the motion it is inter alia stated that the 1st defendant had engaged some advocate. He had given him all the

documents and instructions but he never drafted the written statement. He had, therefore, to withdraw the case from him. He then placed all the papers in the hands of the present advocate. The written statement was prepared and affirmed on 20/11/2003. However, thereafter there were settlement talks and hence the written statement was not filed.

3. It appears that settlement talks have failed and, therefore, the 1st defendant now wants to file his written statement. The original written statement affirmed on 20/11/03 is shown to me. In the peculiar facts and circumstances, therefore, in my opinion, an exceptional case for condoning the delay is made out. However, I feel that the 1st defendant should be saddled with costs quantified at Rs.5000/-. Hence the following order:

. "The 1st defendant shall pay costs quantified at Rs.5,000/- to the plaintiff within a period of two weeks from today. The defendant shall satisfy the office that a sum of Rs.5000/- has been paid to the plaintiff.

. On the costs being paid the office shall take the written statement on file.

. Motion is disposed of in the aforestated terms.

JUDGE.